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## **Media Statement by CALS and LRC**

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### **CALS and LRC welcome Constitutional Court judgment**

**In a judgment handed down on Thursday, 18 April 2013, the Constitutional Court dismissed an appeal lodged by agricultural trade association Agri SA claiming mining rights had been expropriated by the State.**

Both the Centre for Applied Legal Studies (CALS) and the Legal Resources Centre (LRC) welcome this landmark judgment. “The objective of the MPRDA has always been to redress the historically unequal, racially-skewed distribution of access to mineral rights. Thursday’s judgment reinforces the importance of transformation in the mining sector for the benefit of all who live in South Africa” said Lisa Chamberlain, Deputy Director at CALS.

“The judgment is to be welcomed. For public interest organisations such as the LRC, which are committed to the promotion of substantive equality and the socio-economic transformation of South Africa, it was critical to defend the progressive State law and policy aimed at redistributing the nation’s mineral resources,” said Wilmien Wicomb, attorney at the LRC.

Agri SA commenced litigation in the High Court, arguing that the Mineral and Petroleum Resources Development Act (MPRDA) expropriated the coal rights of Sebenza (Pty) Ltd. While the application was successful in the High Court, it was then appealed to the Supreme Court of Appeal where the judgment was overturned. Agri SA took the matter on appeal to the Constitutional Court, which handed down its judgment on Thursday 18 April, holding that in this case the MPRDA could not be said to have expropriated mining rights.

The MPRDA, which came into effect in May 2004, is concerned with the regulation of mining practices in South Africa. Effectively, the Act has separated mining rights from property

rights. Where previously landowners automatically held the mining rights for their properties (unless ceded or sold to others), these rights can now only be obtained after applying to the State, which is the custodian of our mineral resources.

While the MPRDA did give the holders of old order mining rights five years to apply and convert them to new order rights, Sebenza did not have the capacity to make this application in the five-year transitional period. Agri SA therefore argued that the State had expropriated the mining rights of the company without fair and adequate compensation.

The Centre for Applied Legal Studies (CALs), represented by the Legal Resources Centre (LRC), was admitted as *amicus curiae* in the Constitutional Court. CALs and the LRC argued that the commencement of the MPRDA did not bring about an expropriation of Sebenza's mineral rights. We argued that the MPRDA is a constitutionally permitted regulatory measure designed to redress the economic inequality that exists in South Africa, where a vast proportion of the country's land and minerals are controlled by a small minority of the people. Accordingly, CALs and the LRC had argued in support of the State's attempts to defend the MPRDA from constitutional challenge.

The Constitutional Court upheld the central argument advanced by the LRC and CALs, in support of the State. As Chief Justice Mogoeng Mogoeng notes in the judgment, "by design, the MPRDA is meant to broaden access to business opportunities in the mining industry for all, especially previously disadvantaged people". The majority of the Court concluded that, while the MPRDA deprived Sebenza of its coal rights, this did not constitute expropriation.

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